

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 3, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP2202-CR

Cir. Ct. No. 2004CF2744

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEFFREY ALLEN HOUSE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: CHARLES F. KAHN, JR., Judge. *Affirmed.*

Before Lundsten, P.J., Dykman and Higginbotham, JJ.

¶1 PER CURIAM. Jeffrey House appeals a judgment convicting him of conspiracy to deliver cocaine. The sole issue on appeal is whether the circuit court properly denied House's motion to suppress telephonic evidence on the

ground that the evidence had been obtained by an illegal wire interception. We conclude that the evidence was legally obtained, and affirm.

¶2 The Wisconsin statutes set out a procedure for law enforcement officials to apply for a court order to intercept wire, electronic or oral communications. However, such wiretaps are only available to investigate certain enumerated crimes. Specifically:

The authorization shall be permitted only if the interception may provide or has provided evidence of the commission of the offense of homicide, felony murder, kidnapping, commercial gambling, bribery, extortion, dealing in controlled substances or controlled substance analogs, a computer crime that is a felony under s. 943.70, or any conspiracy to commit any of the foregoing offenses.

WIS. STAT. § 968.28 (2003-04).¹

¶3 In this case, a Milwaukee police detective applied for an order authorizing law enforcement officers to intercept the cell phone communications of a group of individuals to a specific phone number. The application stated that the police had evidence showing that named individuals and others

have committed, are committing and will continue to commit state violations of Wisconsin Statutes § 961.41(a) (Manufacture, Distribution or Delivery), § 961.41(1m) (Possession With Intent to Manufacture, Distribute or Deliver) and § 961.42 (Keeping a Place for Using, Manufacturing, Keeping or Delivering) for controlled substances including, but not limited to, § 961.16(2)(b) (cocaine), § 961.14(4)(am) (3,4-methylenedioxymethamphetamine: “Ecstasy” or MDMA) and § 961.14(3)(k) (heroin); §§ 939.31 and 961.41(1x) (Conspiracy), and §§ 946.83 and 946.85 (Racketeering and Continuing Criminal Enterprises) as well as federal violations of Title

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

21, United States Code, §§ 841(a)(1) (Possession with the Intent to Distribute and Distribution of Controlled Substances, including but not limited to cocaine, Ecstasy (MDMA) and heroin), 846 (Conspiracy), and 843(b) (Use of a Communication Facility to Facilitate Controlled Substance Felonies), and violations of Title 18, United States Code, §§ 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), and 1956 and 1957 (Money Laundering).

The Chief Judge of the Milwaukee County Circuit Court found probable cause to believe that the identified individuals and others were committing all of the described offenses, and that “these wire (cellular phone) communications will include conversations, the subject of which will concern the receipt, sale, and illegal delivery of controlled substances, the ways and means by which such criminal conduct will occur, the names and identification of other members, the telephone numbers of other telephone facilities employed and the precise nature and full scope of the conspiracies.” The judge then authorized law enforcement officials to intercept communications to the specified phone number concerning or relating to all of the described crimes.

¶4 House was among the group of people charged with conspiracy to deliver cocaine based on the subsequent intercepted communications. He moved to suppress the wiretap evidence under WIS. STAT. § 968.30(9). The circuit court denied that motion, and House now appeals.

¶5 House contends that the wiretap order was unlawful because it authorized the interception of communications relating to racketeering and money laundering, offenses that fall outside the scope of the wiretap statute, in addition to identified drug offenses that he concedes fall within the scope of the statute. We review the application of the wiretap statute to a particular set of facts as a

question of law. *State v. Maloney*, 161 Wis. 2d 127, 128, 467 N.W.2d 215 (Ct. App. 1991).

¶6 The State contends that racketeering and money laundering *are* enumerated offenses encompassed within the phrase “dealing in controlled substances.” While we agree that the phrase “dealing in controlled substances” is not limited to a single statutory offense, we question whether it applies to any crime that might, as a factual matter, be related to dealing in controlled substances. We need not, however, resolve that question because, even assuming for argument’s sake that crimes such as racketeering and money laundering are not crimes covered by the statute, we conclude that the inclusion of non-enumerated offenses did not render the order unlawful.

¶7 WISCONSIN STAT. § 968.28 authorizes a wiretap when the proposed intercepted communications may provide evidence of an enumerated offense. Here, the chief judge found probable cause that intercepting calls to a certain cell phone number would likely provide evidence about a number of drug-related offenses. The fact that the intercepted communications might also provide evidence of related² non-enumerated offenses does not undermine the legitimate purpose of the wiretap statute. *Cf. United States v. Giordano*, 416 U.S. 505, 527 (1974) (requiring suppression under analogous federal law for failure to comply with a statutory requirement that “directly and substantially implement[s] the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device”).

² We do not address what the result might be if the order had also authorized interception of conversations relating to entirely unrelated non-enumerated offenses.

Given the nature of the investigation described in the application for the wiretap here, it was highly likely that the same conversations would relate to both the enumerated drug offenses and racketeering and money laundering. Therefore, if non-enumerated offenses were included, such inclusion did not unlawfully broaden the scope of the wiretap order in this case.

¶8 Because we conclude that the wiretap order was lawful, we do not address the State's argument that suppression is not the proper remedy under these circumstances.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

